

MEMORANDUM

Agenda Item No. 11(A)(2)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 22, 2013

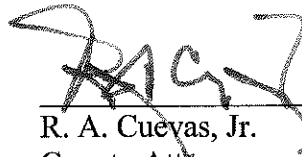
FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution determining whether to accept or reject proposed variances as to the Declaration of Restrictions for Block 36 located in Miami-Dade County, Florida pursuant to the settlement agreement between the City of Miami, the Southeast Overtown/Park West Community Redevelopment Agency and Miami-Dade County

Pursuant to the terms of the Settlement Agreement approved by Resolution No. R-294-13, Committee review for approvals under the Settlement Agreement has been waived. Accordingly, this item will be presented to the full Board for its consideration absent Committee review.

Additionally, a Mayor's Recommendation has been included herein, which explains the background of this item.

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.



R. A. Cuevas, Jr.
County Attorney


RAC/jls

Memorandum



Date: October 22, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Consideration of Variance Requests on Block 36

Recommendation

It is recommended that the Miami-Dade County Board of County Commissioners (Board) reject the three proposed variances to the Declaration of Restrictions for Block 36. The Board must approve or reject any variances to the Declaration of Restrictions, as requested by the CRA in the September 13, 2013 letter attached as Exhibit A to the resolution.

According to the Settlement Agreement between the County, the City of Miami, and the Southeast Overtown/Park West Community Redevelopment Agency (CRA), the County must approve or reject the proposed variances to the Declaration of Restrictions which has been recorded pursuant to the terms of the Settlement Agreement and is attached as Attachment 1 to the cover memorandum. The Settlement Agreement mandates approval or rejection, but does not provide for revision or amendment of the proposed variances.

Scope

The Block to be developed is in Commission District 3, represented by Commissioner Audrey M. Edmonson.

Fiscal Impact/Funding Source

Denial of the variances proposed by the developer does not create a fiscal impact to the County.

However, as noted in the attached Declaration of Restrictions previously approved by the Board through Resolution R-294-13, the selected developer will make separate Project Payments to the County and the CRA for Block 36. The Project Payments received by the County will be used for services that support the Overtown redevelopment project and other Overtown community development efforts. It was estimated that these payments would amount to a minimum of \$1.258 million over 25 years, or potentially more if 2.5 percent of Gross Rent exceeded the minimum payment.

Track Record/Monitor

The County's Internal Services Department will monitor the progress of the development, the recording of any additional documents, and all other aspects of the settlement agreement.

Background

On April 16, 2013, the Board adopted Resolution R-294-13 authorizing the County, the City, and the CRA to settle an existing lawsuit regarding Block 36. The Settlement Agreement was entered into by the parties, and as part of the Settlement Agreement, a Declaration of Restrictions was recorded against Block 36, which restricted the manner in how it could be developed, and provided parameters for such development. The Settlement Agreement pre-approved the selection of Gatehouse Group, LLC or its affiliate as the Developer of Block 36. In the CRA's letter to the County of May 17, 2013, Gatehouse designated its affiliate, Lyric Development, LLC, as the Block

36 Developer. However, in the event that the proposed developer submits any requests for variances from the Declaration of Restrictions, the CRA must provide formal notice to the County of such variances, which must be approved or rejected by the County within 45 days of the notice, or they are deemed approved. On May 17, 2013 the CRA provided notice to the County that Lyric Development, LLC, an affiliate of Gatehouse, was deemed the Block 36 developer under the Settlement Agreement. On September 13, 2013, the CRA provided notice to the County of the Lyric's proposed variances to the Declaration of Restrictions for approval or denial by the County. The proposed variances were approved by the CRA on September 12, 2013 pursuant to Resolution CRA-R-13-0053 (see Attachment 2 to the cover memorandum). In the event of a rejection of some or all of the variance requests, Gatehouse may elect to proceed without the requested variance, or alternatively, a new developer may be selected.

Staff recommends denial of the three variances.

The variances to the Declaration of Restrictions requested by the developer and approved by the CRA, and staff's recommendation, are as follows:

1. Elimination of the Parking Component and all references to the Parking Component.

The Declaration of Restrictions provides for the development of a parking garage with a minimum of 300 spaces. The developer is not proposing to build any additional parking as part of the Retail Component of 30,000 square feet of retail space. The parking garage in part was for use by the Lyric Theatre.

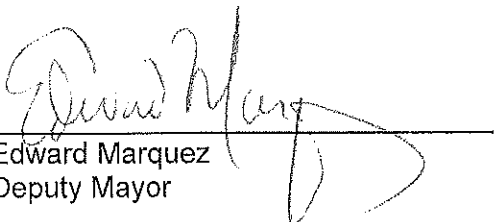
Staff does not recommend approving this variance given that the developer or CRA has not proposed an acceptable alternative, and the request for variance is silent as to what would be required to be constructed in lieu of the parking garage.

2. The developer is requesting extension of the Zoning Approval Deadline from May 14, 2014 to May 14, 2015.

Staff does not recommend approving this variance as it exceeds a reasonable amount of time to obtain zoning approval under the current dates agreed to in the Settlement Agreement and the developer has the opportunity to extend the timeframe to obtain Approvals for six months by paying \$250,000 to each the CRA and the County.

3. The developer is requesting extension of the Commencement of Vertical Construction Deadline from May 14, 2015 to May 14, 2016.

Staff does not recommend approving this variance, as it exceeds a reasonable amount of time to commence vertical construction.


Edward Marquez
Deputy Mayor

ATTACHMENT 1

CFN 2013R0384021
DR BK 28631 Pgs 1277 - 1288 (12pgs)
RECORDED 05/15/2013 14:44:46
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This Instrument was
prepared by

Debra Herman, Esq.
Miami-Dade County Attorney Office
Stephen P. Clark Center
111 N.W. 1st Street
Suite 2800
Miami, Florida 33128

DECLARATION OF RESTRICTIONS

May 8, 2013 by and between Miami-Dade County, Florida, a political subdivision of the State of Florida (the "County") and the Southeast Overtown/Park West Community Redevelopment Agency, a public agency and body corporate to Section 163.356, Florida Statutes (the "CRA").

RECITALS

A. The County and the CRA hold or claim fee simple title interest in and to the land in Miami-Dade County, Florida, legally described in Composite Exhibit "1" attached hereto (the "Property").

May 9, 2013 by and between the City of Miami, a municipal corporation (the "City"), the County and the CRA (the "Settlement Agreement"), the County has agreed to quit claim its interest in the Property to the CRA after the recordation of this Declaration.

C. The City has quit claimed its interest in the Property to the CRA.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the CRA, as the current owners of the Property, agree as follows:

1. Recitals. The recitals to the Declaration are true and correct and incorporated herein by reference.

2. Development Restrictions. The CRA and the County agree that the Property shall be developed as (a) a retail, office, hotel and/or permitted institutional component containing a minimum of 30,000 square feet and a sufficient number of parking spaces not less than as required by the applicable building codes, (the "Retail Component") and (b) a parking garage containing a minimum of three hundred (300) parking spaces (the "Parking Component") of which up to fifty (50) parking spaces may be utilized to satisfy the parking required for the Retail Component in 2(a) (collectively the "Project"). If the Parking Component includes any office space and/or a retail liner exceeding 5,000 square feet then, up to 5,000 square feet can be

deemed to reduce the minimum 30,000 square foot requirement of the Retail Component. The lot coverage of the Parking Component will not exceed (i) the maximum required by the applicable zoning code; or (ii) fifty percent (50%), whichever is less.

3. Selection of Developer. The County agrees that no approval from the County shall be required if the CRA enters into the Block 36 Development Agreement, as defined in the Settlement Agreement, with The Gatehouse Group, LLC, a Commonwealth of Massachusetts limited liability company ("Gatehouse"), or its affiliate. If the CRA finalizes the Block 36 Development Agreement with Gatehouse, or its affiliate, Gatehouse, or its affiliate, shall be deemed the Developer for the purpose of this Declaration. If the CRA and Gatehouse are not able to finalize the Block 36 Development Agreement on terms acceptable to the CRA, then with thirty (30) days from the date the CRA terminates negotiations with Gatehouse, the CRA shall conduct a solicitation, in accordance with Section 163.380, Florida Statutes, (the "Development Opportunity") to select a developer for the Project (the "Developer") in accordance with the terms of the Settlement Agreement. The CRA shall, within five days of the selection of the Developer by the Board of Commissioners of the CRA, advise the County by hand delivery or by certified mail, return receipt requested, addressed to the County Mayor or its designee (the "Notice") of the Developer selected by the CRA pursuant to the Developer Opportunity and any proposed variances to this Declaration. The Notice shall be deemed delivered to the County on the day hand delivered or the date the return receipt is executed. In such event, the Board of County Commissioners shall have forty five (45) days from the date of delivery of the Notice (unless the Commission is in recess during such period in which instance an additional day will be added for each day of recess), to approve or reject the Developer selected by the CRA and consider any proposed variances to the Declaration as provided in Section 15 herein, and if the Board of County Commissioners does not approve or reject, within forty five (45) days from the date of delivery of the Notice (unless the Commission is in recess during such period in which instance an additional day will be added for each day of recess), the selection by the CRA and any proposed variances to this Declaration shall be deemed approved by the County. Such deemed approval shall only occur if the Board of County Commissioners fails to approve or reject the Developer and any such proposed variances. In accordance with the County Charter, in the event that the Board of County Commissioners does approve or reject the Block 36 Developer (including the consideration of any proposed variances to the Block 36 Declaration as set forth in paragraph 15 herein) within such period, then 1) the Mayor shall have the right to veto such action and 2) the Board of County Commissioners shall have the right to override such veto at the next regularly scheduled County Commission meeting. The veto and override set forth in this paragraph are separate from the referenced Board of County Commissioner approval and rejection and attendant 45 day period limitation, and if the Board of County Commissioners does approve or reject the Developer within the required time period, the total period after the veto and override may exceed 45 days. In the event the County rejects the Developer selected by the CRA, the CRA shall issue a new Developer Opportunity within thirty (30) days from the date of such rejection. The process shall continue until the Developer is approved or deemed approved by the Board of County Commissioners. The Development Opportunity will require the Developer to diligently pursue the simultaneous development of the Parking Component and the Retail Component, with a preference on completion of the Parking Component first. The Development Opportunity shall not require that any component or phase of the Project be completed before construction on another component or phase can commence.

4. Development Agreement. The CRA shall enter into a development agreement (the "Development Agreement") with the Developer, approved or deemed approved by the Board of County Commissioners within ninety (90) days from the date the Developer is approved or deemed approved by the Board of County Commissioners. If the CRA does not enter into the Development Agreement with the Developer approved or deemed approved by the Board of County Commissioners within the ninety (90) day period, the CRA shall terminate negotiations with such Developer and issue a new Developer Opportunity within thirty (30) days from the end of such ninety (90) day period.

5. The Developer shall obtain all applicable land use and zoning approvals for the Project (the "Approvals") within the earlier of (i) twelve months from the recording of this Declaration if the CRA has executed a proposed Development Agreement with Gatehouse or its affiliate (which effectiveness would be contingent on this Settlement) or (ii) two years from the recordation of this Declaration. The CRA shall convey the Property (excluding solely that portion of the property to be utilized for the Parking Component) by deed to the Developer prior to the Developer commencing vertical construction of the Retail Component.

6. Construction. The Developer must commence vertical construction (defined as physical structures actually being constructed on the Property pursuant to applicable permits) of the Retail Component and the Parking Component within two years from the recordation of this Declaration if Gatehouse or its affiliate is the developer, or within three years from the recordation of this Declaration if the developer is not Gatehouse or its affiliate. The Developer must substantially complete construction of the Retail Component within twenty-four (24) months from commencement of vertical construction of the Retail Component (the "Retail Completion Date"). The Developer must substantially complete construction of the Parking Component within twenty four (24) months from commencement of vertical construction of the Parking Component (the "Parking Completion Date"). The Retail Completion Date and the Parking Completion Date shall be evidenced by one or more temporary or permanent certificates of occupancy (or their equivalent) for all buildings comprising the particular component. Both the Retail Completion Date and Parking Completion Date shall automatically be extended one day for each day of Unavoidable Delay provided the Executive Director of the CRA concurs with the Developer that an Unavoidable Delay has occurred and the County (by its Major or Mayor's designee) agree that an Unavoidable Delay has occurred, which approval by the County shall not be unreasonably withheld. The term "Unavoidable Delay" means delays due to area wide strikes, acts of God, floods, hurricanes, casualties, fires, acts of the public enemy and governmental moratoriums. The term Unavoidable Delay shall not include delays caused by any other source, including but not limited to a governmental entity acting in its proprietary or regulatory capacity or delays caused by lack of funds.

7. Developer Default.

A. In the event the Developer (i) does not obtain the Approvals in the timeframe provided in Section 5 of this Declaration, (ii) fails to achieve substantial completion of the Retail Component by the Retail Completion Date, as same may be extended as a result of Unavoidable Delays, (iii) fails to achieve substantial completion of the Parking Component by the Parking Completion Date, as same may be extended as a result of Unavoidable Delays, or (iv) fails to make any Project Payment when due (as defined in Paragraph 17 herein), the CRA

and the County (as applicable) may declare the Developer in default by sending a Notice of Default (the "Default Notice"). The Default Notice shall be hand delivered to the Developer or mailed to the Developer by certified mail, return receipt requested. The Default Notice shall be deemed delivered upon the date received if hand delivered, or if mailed, on the date the return receipt is executed or the date delivery is refused. Upon receipt, or deemed receipt, of the Default Notice, the Developer shall have ninety (90) days to cure (the "Default Cure Period"). Extensions of the Default Cure Period for good cause shown shall be in the sole discretion of the CRA if the CRA has issued the Default Notice, or in the sole discretion of the County if the County has issued the Default Notice.

B. In the event the Default Notice is issued pursuant to Section 7(A)(i), the Developer may extend the timeframe in which to obtain the Approvals for six (6) months by paying to each of the County and the CRA Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) on or before the end of the Default Cure Period, as same may have been extended in accordance with the last sentence of Section 7(A). The extension of the Approval Period pursuant to this Section 7(B) to cure a default pursuant to Section 7(A)(i) is a one time right of the Developer and may not be utilized in connection with any subsequent default pursuant to Section 7(A)(i).

C. In the event the Default Notice is issued pursuant to Section 7(A)(ii), the Developer may extend the Retail Completion Date, as same may have been extended as a result of Unavoidable Delays, for an additional six (6) months by paying to each of the County and the CRA Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) on or before the end of the Default Cure Period, as same may have been extended in accordance with the last sentence of Section 7(A). The extension of the Retail Completion Date pursuant to this Section 7(C) to cure a default pursuant to Section 7(A)(ii) is a one time right of the Developer and may not be utilized in connection with any subsequent default pursuant to Section 7(A)(ii).

D. In the event the Default Notice is issued pursuant to Section 7(A)(iii), the Developer may extend the Parking Completion Date, as same may have been extended as a result of Unavoidable Delays, for an additional six (6) months by paying to each of the County and the CRA Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) on or before the end of the Default Cure Period, as same may have been extended in accordance with the last sentence of Section 7(A). The extension of the Parking Completion Date pursuant to this Section 7(D) to cure a default pursuant to Section (A)(iii) is a one time right of the Developer and may not be utilized in connection with any subsequent default pursuant to Section 7(A)(iii).

E. In the event the Default Notice is issued pursuant to 7(A)(i) (ii) or (iii) of this Declaration, and is not cured prior to the end of the Default Cure Period, as same may be extended, in accordance with the last sentence of Section 7(A), title to any portion(s) of the Property which have not been improved with buildings shall automatically revert back to the CRA, subject to the rights of the County set forth in the Declaration and Settlement Agreement and pending the selection of another Developer as set forth therein (the "Reverter Property").

F. If the Default Notice is issued pursuant to Section 7(A)(iv) and same is not cured within the Default Cure Period, then all remaining Project Payments together with a fifteen percent (15%) penalty shall be automatically accelerated and shall be deemed immediately due

and payable to the County and the CRA. In such event, the County and the CRA shall have the right to pursue any and all remedies against the Developer for the outstanding amounts.

G. The Developer shall be liable to the County and the CRA for all reasonable attorneys fees and costs incurred by the County and the CRA as a result of a Developer Default.

H. Any payments made to the County and the CRA pursuant to Sections 7(B), 7(C) and 7(D) shall not constitute a Project Payment and shall not be credited against any Project Payment.

8. Reverter RFP. In the event any portion of the Property reverts to the CRA, the CRA shall issue a new Developer Opportunity with respect to the Reverter Property, in accordance with Section 3 of the Declaration, within ninety (90) days from the date the CRA acquires the Reverter Property, and shall provide Notice to the County of the Developer selected for its Approval as set forth herein and in the Settlement Agreement. In the event the Board of County Commissioners rejects the Developer selected by the CRA within the new Approval Period, the CRA shall issue a new Developer Opportunity within thirty (30) days from the date of such rejection. The process shall continue until the Developer is approved or deemed approved by the Board of County Commissioners. The CRA shall enter into a Development Agreement with the Developer approved or deemed approved by the Board of County Commissioners within ninety (90) days of the date the Developer is approved or deemed approved by the Board of County Commissioners. If the CRA does not enter into the Development Agreement with the Developer approved or deemed approved by the Board of County Commissioners within the ninety (90) day period, the CRA shall terminate negotiations with such Developer and issue a New Developer Opportunity within thirty (30) days of the end of such ninety (90) day period. The new Developer shall be bound by the terms of this Declaration. To the extent that any portion of the Property reverts to the CRA after six (6) years from the date of recordation of this Declaration, then, in such event, if such portion of the Property that reverts to the CRA same shall revert from the CRA to the County upon written notice from the County to the Executive Director of the CRA, free and clear of all claims by the CRA and any Developer and free and clear of this Declaration. If requested by the County, the CRA shall convey such portion of the Property to the County by quit claim deed. In the event of such reversion to the County, this Declaration shall then automatically terminate. Notwithstanding the foregoing, if the Parking Component has been completed, title to the Parking Component shall remain vested in the CRA

9. Notwithstanding any other provision set forth herein, in the event that vertical construction (defined as physical structures actually being constructed on the Property) has not commenced on the Property within two years from the date of the recording of this Declaration if the developer is Gatehouse or its affiliate, or three years from the date of the recording of this Declaration if the developer is any other entity, the Property shall revert to the County upon written notice by the County to the Executive Director of the CRA at any time prior to the commencement of the vertical construction. If requested by the County, the CRA shall provide the County with a special warranty deed transferring all right, title and interest in and to the Property to the County, free and clear of all claims and encumbrances and free and clear of this Declaration, which the County shall record. However, such reverter shall become effective upon

receipt by the CRA of the written notice of the exercise of the reverter, regardless of the special warranty deed. In the event of such reversion, this Declaration shall then automatically terminate, and notice of same may be recorded by the County.

10. Modification. Provided that the Developer is not in default beyond the applicable grace periods and is current with all of its payment obligations to the CRA and the County, this Declaration may be modified, amended or released with respect to the Property, or any portion thereof, by written instrument executed and recorded by the then owner(s) of the fee simple title to the Property, the CRA and the County with the approval of the respective Boards of the CRA and the County. Notwithstanding the foregoing, the Executive Director of the CRA (the "Executive Director") may unilaterally, without the consent of the County being required, modify this Declaration with respect to the following quantifiable requirements, by an amount not to exceed 10 percent of such number or 10 percent of such percentages, as follows: (a) the number of parking spaces in Section 2; (b) the time frames set forth in Sections 5 and 6; and (c) the number of retail square feet in Section 2. Additionally, the Executive Director may modify this Declaration in any non-substantive manner without the consent of the County, provided such modifications are in writing. Any modifications, amendments, or releases shall be evidenced by a recorded amendment to this Declaration executed by all required parties thereto.

11. No Limitation of Remedies. Nothing contained herein shall be construed as limiting the rights and remedies of the County, the City or the CRA set forth in the Settlement Agreement.

12. County Inspection. Prior to completion of construction of the Project, the County and the CRA shall have the right, but not the obligation, at any time during normal business hours, to enter and inspect the Property to determine whether the requirements of this Declaration are being complied to by the Developer.

13. Covenant Running with the Land. This Declaration shall constitute a covenant running with the land and shall be binding on the CRA and its successors and assigns having an interest in the Property. This Declaration is for the benefit of, and limitation upon, all present and future owners of the Property and for the benefit of the County and the CRA.

14. Term. This Declaration is to run with the land for a period of thirty (30) years and shall be automatically extended for additional ten (10) year periods until the payment of the last Project Payment pursuant to Section 17 has been paid by the Developer.

15. Variance. In the event the Developer selected by the CRA in response to the Developer Opportunity proposed variance from the requirements of this Declaration (including but not limited to Gatehouse and its affiliates), which variances have been approved by the Board of Commissioners of the CRA in light of market conditions and information provided by the Developer, the Board of County Commissioners shall consider such variances at the time the Board of County Commissioners is requested by the CRA to approve the Developer and such variances shall be outlined to the County in the Notice to the County. To the extent that Gatehouse or its affiliates request a variance from the Declaration, such variance must be approved in the same manner and in the same timeframes, as the approval of the Developer. The County agrees to consider such variances at the time it acts on the approval of the Developer (or

the approval of Gatehouse's proposed variance, if any), with no obligation on the part of the Board of County Commissioners to approve any such variances from this Declaration, which shall be in the sole discretion of the Board of County Commissioners. The variances shall be deemed considered if they are included in the documentation submitted for the Board of County Commissioner's consideration by the CRA. If the Board of County Commissioners approves, or is deemed to approve, the Developer and some or all of the variances requested by the Developer, the County and the CRA shall execute an amendment to this Declaration to reflect the variances approved, or deemed approved, by the Board of County Commissioners.

16. Construction. To the extent that this Declaration requires construction, and regardless of the notation of the "preparer" contained upon same, both the CRA and the County equally participated in the drafting of this Declaration, and accordingly, such document shall not be construed in favor of, or against, either party.

17. Compensation.

Beginning the earlier of (a) thirty (30) days from the issuance of a temporary certificate of occupancy or its equivalent for the Retail Component or (b) five (5) years from the date of recordation of this Declaration, the Developer shall separately pay to each of the County and the CRA each year for twenty-five (25) years a sum of money commencing with the greater of Thirty Eight Thousand Five Hundred and No/100 Dollars (\$38,500.00) per year on an annual basis for the first five years and increasing by 3% per year for each year thereafter over the amount for the previous year, or (ii) 2.5% of the Gross Rent paid by tenants of the Property (the "Project Payment"). "Gross Rent" means all monies paid for the occupancy of space within the Retail Component, (but also including, but not limited to, any money-generating operations associated with the Retail Component including parking revenues paid directly or indirectly to the owner of the Retail Component), and including but not limited to flat rent or rent based on a percentage of sales, but shall not include utilities, taxes, or security deposits. Within 90 days from the commencement of the first anniversary of the Project Payment, and every year thereafter for the next twenty four (24) years, the owner of the Retail Component shall submit a "full accounting" of Gross Rent, from the business or businesses located on the Retail Component for the previous year. Full Accounting means an Annual Written Statement, signed by Owner, CEO, or Financial officer of the owner of the Retail Component and certified by it to be true and correct, setting forth the amount of Gross Rent during the preceding year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County and CRA may reasonably determine or require. If this Annual Written Statement when multiplied by two and one half percent (2.5%) exceeds the amount of the previous year's Project Payment paid for the period, the difference ("Annual Adjustment") shall be paid immediately by the owner of the Retail Component to the County and the CRA. There shall be no adjustment if the Statement when multiplied by two and one half percent (2.5%) is less than the amount paid as the previous year's Project Payment. County and CRA shall have the right to cause, upon five (5) days' written notice to the owner of the Retail Component, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the County and/or CRA. If the owner of the Retail Component fails to record, maintain, or make available sales supporting documentation as specified above, which

failure is not cured within thirty (30) days of receipt of written notice, then the owner of the Retail Component shall be deemed to be in default of this Declaration.

A. The term "Project Payment" shall mean the then current annual payment due from the Developer to the County and the CRA. All subsequent Project Payments shall be due on the anniversary of the first payment. No Project Payment shall be due with respect to the Parking Component; however, any rent derived from the retail liner and/or office space, if any, shall be included in the calculation of Gross Rent attributable to the Retail Component.

B. To the extent the gross revenues generated by the Parking Component exceed operating expenses of the Parking Component calculated in accordance with generally accepted accounting principles consistently apply, as confirmed by the CRA's auditors, the owner of the Parking Component shall pay to the County 2.5% of the net revenues derived from the operation of the Parking Component each year on an annual basis for twenty-five (25) years from the issuance of the temporary certificate of occupancy or its equivalent for the Parking Component.

C. In the event Developer fails to make the Project Payment within ten (10) days of when due, Developer shall pay each of the County and the CRA a late fee equal to five percent (5%) of the Project Payment then due.

D. In the event Developer fails to make any Project Payment within thirty (30) days of when due such Project Payment shall bear interest at 12% per annum from the date due until paid.

E. Nothing contained herein shall prevent or otherwise prohibit either the CRA or the County through their Boards upon application by the Developer from waiving their rights to one or more Project Payments, including portions of Project Payments or penalties thereof. In such event, the approval of the CRA shall not be required if the County chooses to waive its rights nor shall approval of the County be required in the event the CRA elects to waive its rights.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS THEREOF the County and the CRA have executed this Declaration as of the date first above written.

Witnesses:

CRA:

Southeast Overtown/Park West Community
Redevelopment Agency, a public agency and
body corporate created pursuant to Section
163.356, Florida Statutes

Printed Name:

By: _____
Clarence E. Woods, III
Executive Director

Printed Name:

ATTEST:

Clerk of the Board

By: _____

Approved for legal sufficiency

By: _____

William R. Bloom, Esq.
Holland & Knight LLP
Special Counsel

Witnesses:

COUNTY:

MIAMI-DADE COUNTY,
a political subdivision of the State of Florida

Printed Name:

Printed Name:

By: _____

ATTEST:

Harvey Ruvin, Clerk

By: _____

Deputy Clerk

Approved for legal sufficiency
County Attorney

By: _____

IN WITNESS THEREOF the County and the CRA have executed this Declaration as of the date first above written.

Witnesses:

CRA:

Southeast Overtown/Park West Community
Redevelopment Agency, a public agency and
body corporate created pursuant to Section
163.356, Florida Statutes

William R Bloom
Printed Name: William R Bloom

Miguel Valentin
Printed Name: Miguel Valentin

By: Clarence E. Woods, III
Clarence E. Woods, III
Executive Director

ATTEST:

Clerk of the Board

By: N. Gwa 5-8-2013

Approved for legal sufficiency

By: William R Bloom
William R. Bloom, Esq.
Holland & Knight LLP
Special Counsel

Witnesses:

COUNTY:

MIAMI-DADE COUNTY,
a political subdivision of the State of Florida

By: _____

Printed Name: _____

Printed Name: _____

ATTEST:

Harvey Ruvin, Clerk

By: _____
Deputy Clerk

Approved for legal sufficiency
County Attorney

By: _____

STATE OF FLORIDA

)
) ss.

COUNTY OF MIAMI-DADE

)

The foregoing instrument was acknowledged before me this 7 day of May, 2013, by Clarence E. Woods, III, Executive Director of the Southeast Overtown/Park West Community Redevelopment Agency, on behalf of the Agency. He is personally known to me or has produced _____ as identification.

(SEAL)

William R Bloom

Notary Public-State of _____

Commission Number: _____

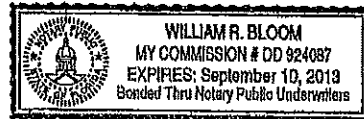


Exhibit 1

Legal Description

Lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22, 23, 24, 26, 27, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 46, 47 and 48 in Block 36 of P. W. WHITE'S RE-SUBDIVISION, according to the Plat thereof, recorded in Plat Book "B" at Page 34 of the Public Records of Miami-Dade County, Florida;

LESS AND EXCEPT THEREFROM that portion thereof lying within the Metropolitan Dade County Metrorail right-of-way which is described as follows: Begin at the Southeast corner of said Block 36; thence run S 87°46'59" W, along the South line of said Block 36, for a distance of 1.53 feet; thence run N 04°44'53" W for a distance of 187.90 feet to a point of intersection with the arc of a circular curve concave to the Southwest, the center of which bears S 82°00'08" W from said point of intersection; thence run Northwesterly along the arc of said circular curve concave to the Southwest, having a radius of 987.00 feet, through a central angle of 06°39'50", for an arc distance of 114.79 feet to the point of intersection with the North line of said Block 36; thence run N 87°46'14" E, along the North line of said Block 36, for a distance of 27.71 feet to the Northeast corner of said Block 36; thence run S 02°16'19" E, along the East line of said Block 36, for a distance of 301.01 feet to the Point of Beginning; and

LESS AND EXCEPT THEREFROM the West 40 feet of Lots 11, 14, 19, 22, 27, 30, 35, 38, 43 and 46 of Blocks 36 of P.W. White's Resubdivision, recorded in Plat Book "B," at Page 34 of the Public Records of Miami-Dade County, Florida.



City of Miami

Legislation

CRA Resolution: CRA-R-13-0053

City Hall
3500 Pan American
Drive
Miami, FL 33133
www.miamigov.com

File Number: 13-00986

Final Action Date: 9/12/2013

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY ("CRA") AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDMENT, IN SUBSTANTIALLY THE ATTACHED FORM, WITH LYRIC DEVELOPMENT, LLC, IN CONNECTION WITH THE DEVELOPMENT OF BLOCKS 25 AND 36; APPROVING THE PROPOSED VARIANCES TO THE SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY, THE CITY OF MIAMI AND THE CRA; FURTHER AUTHORIZING THE EXECUTIVE DIRECTOR TO TRANSMIT THE PROPOSED VARIANCES TO MIAMI-DADE COUNTY FOR CONSIDERATION.

WHEREAS, the Southeast Overtown/Park West Community Redevelopment Agency ("CRA") is responsible for carrying out community redevelopment activities and projects within its Redevelopment Area in accordance with its approved 2009 Southeast Overtown/Park West Redevelopment Plan ("Plan"); and

WHEREAS, Section 2, Goal 3/Principles 2 and 3, at pages 12 and 14, of the Plan lists creating infill housing, and developing a variety of housing options as stated redevelopment goals; and

WHEREAS, Section 2, Goal 3/Principle 4, at pages 12 and 14, of the Plan also lists the creation of jobs within the community as a stated redevelopment goal; and

WHEREAS, on June 25, 2012, the CRA's Board of Commissioners, by Resolution No. CRA-R-12-0043, authorized the Executive Director to execute a development agreement with Lyric Development LLC (the "Developer"), an affiliate of Gatehouse Development Corporation, for the development of mixed-use development on portions of Blocks 25 and 36 (the "Project"); and

WHEREAS, on December 17, 2012, the CRA and the Developer executed a Development Agreement for the Project; and

WHEREAS, the Developer wishes to modify and amend certain terms and provisions of the Development Agreement to provide for, among other things, variances to certain development requirements for Block 36, as well as additional funding in the event the CRA's Bond Issue is approved; and

WHEREAS, in accordance with the Settlement Agreement between the City of Miami, Miami-Dade County, and the CRA, dated May 9, 2013, Miami-Dade County must approve any variances to the development requirements for Block 36; and

WHEREAS, the Board of Commissioners wishes to authorize the Executive Director to execute an Amendment to the Development Agreement, in substantially the attached form, with the Developer in connection with the Project; and

WHEREAS, the Board of Commissioners also wishes to expressly approve the proposed variances, as reflected in Exhibit "A" of the Amendment attached hereto;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated herein as if fully set forth in this Section.

Section 2. The Executive Director is authorized to execute an Amendment, in substantially the attached form, with Lyric Development, LLC in connection with the development of Blocks 25 and 36.

Section 3. The proposed variances set forth in Exhibit "A" of the Amendment are expressly approved.

Section 4. The Executive Director is directed to transmit the proposed variances to Miami-Dade County for consideration.

Section 5. This Resolution shall become effective immediately upon its adoption.

Exhibit "A"

Variances requested from Block 36 Declaration of Restrictions

1. Elimination of the Parking Component and all references to the Parking Component.
2. Extend the Zoning Approval Deadline from May 14, 2014 to May 14, 2015.
3. Extend Vertical Construction Deadline from May 14, 2015 to May 14, 2016.




MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 22, 2013

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A)(2)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☒ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 11(A)(2)

Veto _____

10-22-13

Override _____

RESOLUTION NO. _____

RESOLUTION DETERMINING WHETHER TO ACCEPT OR REJECT PROPOSED VARIANCES AS TO THE DECLARATION OF RESTRICTIONS FOR BLOCK 36 LOCATED IN MIAMI-DADE COUNTY, FLORIDA PURSUANT TO THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF MIAMI, THE SOUTHEAST OVERTOWN/PARK WEST COMMUNITY REDEVELOPMENT AGENCY AND MIAMI-DADE COUNTY

WHEREAS, pursuant to Resolution No. R-294-13, the Board authorized settlement of the lawsuit between the City of Miami, the Southeast Overtown/Park West Community Redevelopment Agency (the "CRA") and the County; and

WHEREAS, the City of Miami, the CRA and the County entered into the settlement agreement and recorded a Declaration of Restrictions against Block 36 in accordance therewith, which set forth requirements for development on such Block; and

WHEREAS, the settlement agreement preapproved The Gatehouse Group, LLC or its affiliate (in this case Lyric Development, LLC) as the Developer of Block 36, subject to the CRA entering into a development agreement in accordance with the Declaration of Restrictions; and

WHEREAS, the settlement agreement provided that variances to the Declaration of Restrictions could be requested by the Developer and submitted by the CRA to the County for consideration; and

WHEREAS, the CRA was required to provide notice of the proposed variances to the Declaration, and the Board would then have 45 days in which to approve or reject the proposed variances to the Declaration; and

WHEREAS, the CRA submitted notice of the proposed variances to the County on September 13, 2013, which is attached as Exhibit A; and

WHEREAS, the Board has considered each of the proposed variances set forth in Exhibit A; and

WHEREAS, this Board has considered the Mayor's Memorandum which is attached hereto and incorporated herein,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board ratifies and adopts those matters set forth in the foregoing recitals.

Section 2. This Board rejects each of the three variances requested from the Block 36 Declaration of Restrictions set forth in Exhibit "A."

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of October, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Debra Herman

Holland & Knight

701 Brickell Avenue, Suite 3000 | Miami, FL 33131 | T 305.374.8500 | F 305.789.7799
Holland & Knight LLP | www.hklaw.com

William R. Bloom
(305) 789-7712
william.bloom@hklaw.com

September 13, 2013

By Hand Delivery

Honorable Carlos A. Gimenez
Mayor
Miami-Dade County Office of the Mayor
111 NW 1st Street
Miami, FL 33128

Re: Settlement Agreement effective May 15, 2013 (the "Settlement Agreement") by and among the City of Miami, the Southeast Overtown/Park West Community Redevelopment Agency and Miami-Dade County, Florida. Defined terms utilized herein but not defined herein shall have the meaning ascribed to said terms in the Settlement Agreement.

Dear Mayor Gimenez:

By letter dated May 17, 2013, I advised you that the CRA had finalized the Block 36 Development Agreement with Lyric Development, LLC, a Florida limited liability company, which is an affiliate of Gatehouse. Pursuant to the terms of the Settlement Agreement, Lyric Development, LLC has been deemed the "Block 36 Developer" for purposes of the Settlement Agreement without the necessity of obtaining additional County approval of the selection of a Block 36 Developer, unless variances to the Block 36 Declaration are proposed as set forth in Paragraph 23 of the Settlement Agreement, which variances shall be subject to County approval as provided in the Settlement Agreement.

Lyric Development, LLC has requested the variances from the Block 36 Declaration which are listed on Exhibit "A" attached hereto (the "Proposed Variances"). The Proposed Variances, approved by the CRA Board of Commissioners on September 12, 2013, are subject to County approval in accordance with Paragraph 23 of the Settlement Agreement.

In accordance with the terms of the Settlement Agreement, the Board of County Commissioners shall have forty-five (45) days from receipt of this Block 36 Notice to consider the Proposed Variances and if the Board of County Commissioners does not approve or reject the Proposed Variances, within forty-five (45) days from receipt of this Block 36 Notice (unless

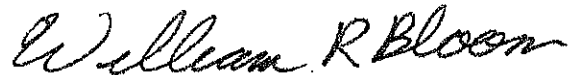
Honorable Carlos A. Gimenez
September 13, 2013
Page 2

the Commission is in recess during such period, in which instance an additional day will be added for each day of recess), the Proposed Variances to the Block 36 Declaration shall be deemed approved by the County.

Should you have any questions please feel free to contact me.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in cursive script that reads "William R. Bloom".

William R. Bloom

WRB:dad

cc: Debra Herman, Esq.
Clarence E. Woods III
Edward Marquez

Exhibit "A"

Variances requested from Block 36 Declaration of Restrictions

1. Elimination of the Parking Component and all references to the Parking Component.
2. Extend the Zoning Approval Deadline from May 14, 2014 to May 14, 2015.
3. Extend Vertical Construction Deadline from May 14, 2015 to May 14, 2016.